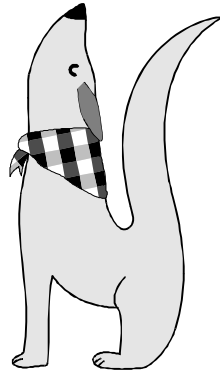


## **MODULE 3**

### **EPA Tribal Policy and Initiatives**



## **MODULE 3**

## **EPA Tribal Policy and Initiatives**

### **SUGGESTED TIME**

2 hours

### **OBJECTIVES**

After completing this module, participants will:

- understand EPA's Indian Policy, how it has been reaffirmed over the past 14 years, and how it applies to their work;
- be able to identify examples of mechanisms that are used within EPA for working with tribes;
- be knowledgeable of EPA's tribal infrastructure; and
- understand current EPA initiatives.

### **INSTRUCTIONAL ACTIVITIES AND THEIR ORDER**

- Presentation—overheads 1-4 (1 hour and 15 minutes)
- Optional policy principles exercise (25-30 minutes)

### **INSTRUCTIONAL MATERIALS**

- Overheads/overhead projector/screen
- Participant notebook with overheads and exercises
- EPA Indian Policy
- EPA Strategic Plan, Page 85-86
- Handouts
  - ▶ Tribal Operations Action Memorandum
  - ▶ Sample Tribal Environmental Agreement
  - ▶ AIEO matrix of program delegations to tribes
  - ▶ Current EPA initiatives



Coyote is a common and mischievous spirit throughout the Native American tribes.

---

## EPA TRIBAL POLICY AND INITIATIVES

---



### **Talking Points:**

- This section discusses the development of EPA's Tribal Policy from its issuance in 1984 to the reaffirming of its principles and the creation of appropriate action items in a memo from Carol Browner in 1994 and in the EPA Strategic Plan of 1997. Also in this section, components of EPA's tribal infrastructure and recent EPA initiatives are discussed.



---

### **Executive Order 13084 on Consulting and Coordinating with Tribes**

- Effective date is 8/12/98.
  - Supplements memorandum of April, 1994.
- 



#### **Talking Points:**

- Executive Order 13084 is designed to supplement, not supercede, President Clinton's April 1994 memorandum. This Executive Order states that federal agencies:
  - ▶ shall have an effective process for federally-recognized Indian tribes to provide meaningful and timely input on regulatory policies affecting tribal communication;
  - ▶ shall avoid, to the extent practicable and permitted by law, the promulgation of regulations that impose substantial direct compliance costs on tribal communities without necessary funds or without consultation with affected tribes and written justification to the Office of Management and Budget;
  - ▶ shall take steps to streamline waiver processes of statutory or regulatory requirements; and
  - ▶ should use consensual methods for developing regulations, where appropriate.

---

***For more information  
consult Chapter 3 page 55  
of the Resource Guide.***

---



---

### Presidential Memorandum on Government-to-Government Relations



- Ensure that rights of tribal governments are fully respected.
  - Consult with tribes before taking actions that affect them.
- 

#### Talking Points:

- President Clinton signed a memorandum, in April of 1994, “to ensure that the rights of sovereign tribal governments are fully respected.” The memo states that “[a]s executive departments and agencies undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty.”
- This memorandum, among other things, directs federal departments and agencies to “consult” with tribal governments, to the greatest extent practicable and to the extent permitted by law, prior to taking actions that affect federally-recognized tribal governments.

---

**Suggestion:** The trainer may want to have participants look at the memo, particularly bullet ‘b’ on page 2 of the memo.

---

---

***For more information  
consult Chapter 3 page 56  
of the Resource Guide.***

---



---

### **EPA Indian Policy (1984)**

- First federal agency to adopt a formal Indian Policy
- Need for an Indian Policy arises from EPA's mission and the relationship between tribes and the federal government



---

#### **Talking Points:**

- In 1984, EPA became the first federal agency to adopt a formal Indian Policy. This policy has since been reaffirmed by every subsequent Agency Administrator, including Administrator Browner in 1994. This policy is intended to provide guidance to EPA staff and managers in dealing with tribal governments and in responding to the problems of environmental management on Indian reservations in order to protect tribal health and environments.
- To ensure that EPA gives special consideration to tribal interests and tribal involvement, nine principles, discussed in the next few slides, are outlined in the EPA Indian Policy

---

***For more information  
consult Chapter 3 page 56  
of the Resource Guide.***

---



---

### **EPA Indian Policy: Guiding Principles**

1. Work proactively and directly with Indian tribes.
  2. Recognize the sovereignty of tribal governments to set standards, make policy decisions, and manage reservation programs.
- 



#### **Talking Points:**

- The first two principles of EPA's Indian Policy are:
  1. Stand ready to work directly with Indian tribal governments on a one-to-one basis.
  2. Recognize tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with Agency standards and regulations.

---

#### **Optional Policy Exercise:**

Divide participants into nine groups and have each group discuss concrete measures that EPA can take to fulfill one of the nine policy principles.

Refer participants to EPA Policy for the Administration of Environmental Programs on Indian Reservation 1984, accompanied by Administrator Browner reaffirmation of March 1994 in the Appendix.

---



---

### **EPA Indian Policy: Guiding Principles (continued)**



3. Encourage and assist tribes to take regulatory and program management responsibilities for reservation lands.
  4. Identify and remove existing legal and procedural impediments to working effectively with tribes.
- 

#### **Talking Points (continued):**

- The third and fourth principles of EPA's Indian Policy are:
  3. Take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities for reservation lands.
  4. Take appropriate steps to remove existing legal and procedural impediments to working directly and effectively with tribal governments on reservation programs.





---

### **EPA Indian Policy: Guiding Principles (continued)**



5. Ensure that tribal concerns and interests are considered whenever actions may affect reservation environments.
  6. Encourage cooperation between tribal, state, and local governments.
- 

#### **Talking Points (continued):**

- The fifth and sixth principles of EPA's Indian Policy are:
  5. Consistent with the federal trust responsibility, ensure that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect reservation environments.
  6. Encourage cooperation between tribal, state and local governments to resolve environmental problems of mutual concern.



---

### **EPA Indian Policy: Guiding Principles (continued)**



7. Enlist other federal agencies with related responsibilities on Indian reservations to support cooperative efforts.
  8. Ensure compliance with environmental statutes and regulations on Indian reservations.
- 

#### **Talking Points (continued):**

- The seventh and eighth principles of EPA's Indian Policy are:
  7. Work with other federal agencies which have related responsibilities on Indian reservations to enlist their interest and support in cooperative efforts to help tribes assume environmental program responsibilities for reservations.
  8. Strive to assure compliance with environmental statutes and regulations on Indian reservations.



---

### **EPA Indian Policy: Guiding Principles (continued)**



9. Incorporate these principles into planning and management activities, and ongoing policy and regulation development processes.
- 

#### **Talking Points (continued):**

- The ninth guiding principle of EPA's Indian Policy is:
  9. Incorporate these principles into planning and management activities, including budget, operating guidance, legislative initiative, management accountability system, and ongoing policy and regulation development processes.



---

### Executive Order 12898 on Environmental Justice



- Focus federal attention on the environmental and health conditions in minority and low- income communities.
  - Apply concepts of environmental justice to Native American programs.
- 

#### Talking Points:

- Executive Order 12898 on “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” and its accompanying memorandum were issued in February 1994. The order is designed to focus federal attention on the environmental and human health conditions in minority communities and low-income communities. Specifically, Section 6-606 of the Order states that “...each Federal Agency responsibility set forth under this Order shall apply equally to Native American Programs...”
- In addition, Executive Order 12898 directs the Department of the Interior to coordinate application of this order to federally recognized Indian tribes.
- *However, it is important to be careful when applying the concepts of environmental justice to tribes because tribes are different from other minority groups because of their unique legal status.*

---

**Suggestion:** For more information, refer participants to Executive Order 12898 in the Appendix.

---

---

***For more information consult Chapter 3 page 57 of the Resource Guide.***

---



---

### Executive Order 13007 on Sacred Sites

- Promote access to sacred sites by Indian religious practitioners.
  - Provide additional protection for the physical integrity of sacred sites.
- 



#### Talking Points:

- Executive Order 13007 was issued in May 1996, to encourage land management agencies to allow access to American Indian sacred sites by Indian religious practitioners and to provide additional protection for the physical integrity of such sacred sites. The Order applies to federally-owned lands, except Indian Trust lands. The Order complements the protections afforded by religious freedom legislation, and the Presidential Directive of April 1994, requiring executive branch departments and agencies to accommodate, as appropriate, the need for eagle feathers in the practice of American Indian religions.

---

**Suggestion:** For more information, refer participants to Executive Order 13007 in the Appendix.

---

---

***For more information consult Chapter 3 page 58 of the Resource Guide.***

---



---

### **Tribal Operations Action Memorandum Issued by Carol Browner in 1994**

---



- Outlines steps to strengthen EPA's tribal programs
  - Actions that resulted include:
    - ▶ Established the EPA/Tribal Operations Committee (TOC)
    - ▶ Created EPA's American Indian Environmental Office (AIEO)
- 

#### **Talking Points:**

- On July 14, 1994, Administrator Carol Browner issued a memo "Announcement of Actions for Strengthening EPA's Tribal Operations." In this memo she outlined steps to promptly strengthen the Agency's tribal programs. Action items in this memorandum include:
  - ▶ establish the EPA/Tribal Operations Committee (TOC);
  - ▶ created EPA's American Indian Environmental Office;
  - ▶ introduce Tribal/EPA Environmental Agreements (TEAs);
  - ▶ establish Program and Regional work plans based on TEAs;
  - ▶ implement management and compliance activities;
  - ▶ review and strengthen program and regional Indian organizations;
  - ▶ ensure an effective EPA/Tribal liaison capacity exists to provide direct field assistance to tribes;
  - ▶ provide training to EPA management and staff on how to work effectively with tribal governments;
  - ▶ enhance communications with tribes;
  - ▶ use available discretion to consolidate issuance and administration requirements of grants; and
  - ▶ invest resources into tribal operations.

---

***For more information  
consult Chapter 3 page  
58 of the Resource  
Guide.***

---



---

### Other Important Documents

---



- Federal, Tribal, and State Roles in the Protection and Regulation of Reservation Environments (Concept Paper).
  - EPA Environmental Justice Strategy
  - Memorandum of Understanding Between BIA, EPA, HUD, and IHS
- 

#### Talking Points:

- There are a number of other important documents that clarify EPA's tribal policies. Among these are the following:
  - ▶ Federal, Tribal, and State Roles in the Protection and Regulation of Reservation Environments (concept paper). This paper encourages coherent and consistent regulation on Indian reservations; recognizes that the differences between tribal and state governments can be sensitive and far-reaching; and directs EPA staff to promote cooperative approaches to environmental problems.
  - ▶ EPA Environmental Justice Strategy outlines initiatives to increase public participation and environmental protection for American Indians and other indigenous communities. The strategy also states that EPA is to take into account cultural use of natural resources when conducting environmental research and other activities.
  - ▶ In June of 1991, the BIA, EPA, HUD, and IHS entered into an agreement to identify areas of mutual interest and responsibility of the four agencies and to encourage the coordination of the agency activities to promote the most efficient and integrated use of resources.

---

***For more information  
consult Chapter 3 pages  
58-60 of the Resource  
Guide.***

---



---

### **Tribal Issues Included in EPA's Strategic Plan (1997)**



“The Agency is committed to working with Tribes to assure the protection of human health and the Tribal homeland environment in a manner consistent with a government-to-government relationship and our interest in conservation of cultural uses of natural resources.” (Page 12)

---

#### **Talking Points**

- EPA's Strategic Plan, dated September 1997, recognizes Indian tribes as one of the Agency's many “partners in change.”
- One of the Agency Guidance Principles is to “Place Emphasis on Indian country” and many of the objectives for the Agency's major goals reference specific work that should be done in Indian country.
- The Strategic Plan identifies the EPA Indian Program as a “key cross-Agency Program” and includes a list of key objectives (discussed in the next slide) that reinforce the principles outlined in the 1984 Indian Policy and in Browner's 1994 memo.

---

**Suggestion:** Provide a copy of the EPA Strategic Plan to show participants Indian references.

---





---

### Key Objectives Described in the Strategic Plan



- Key objectives of the Indian Program include:
    - ▶ build tribal infrastructure and capacity to implement environmental programs;
    - ▶ complete TEAs;
    - ▶ implement fully the 1984 EPA Indian Policy Statement; and
    - ▶ resolve transboundary issues.
- 

#### Talking Points:

- Key objectives within the Indian Program, as outlined in EPA's Strategic Plan, are:
  - ▶ achieve adequate environmental infrastructure throughout Indian country;
  - ▶ complete the tribal/EPA Environmental Agreements. These agreements contain the tribal environmental baseline assessment, identify tribal environmental priorities, and specify EPA's and the tribe's commitments to achieve these priorities;
  - ▶ implement fully the 1984 EPA Indian Policy Statement;
  - ▶ increase significantly the number of tribes implementing environmental programs;
  - ▶ implement environmental programs (federal or tribal) within tribal homelands;
  - ▶ build capacity and adequate internal mechanisms to help tribes implement programs, and in the absence of tribal implementation, establish means for EPA implementation; and
  - ▶ establish a mechanism in partnership with tribal and state governments, to resolve transboundary issues.
- Many objectives for 10 major EPA goals include references to work in Indian country.

---

**Suggestion:** Refer to page 85 of EPA's 1997 Strategic Plan.

---



---

### **EPA's Indian Program as Described in the Strategic Plan**



- The Strategic Plan also outlines general steps for accomplishing the key objectives.
  - These steps reinforce the principles and actions set forth in the 1984 Indian Policy and the 1994 memo.
- 

#### **Talking Points:**

- The objectives of the Indian Program can be met through a combination of methods, including:
  - ▶ increased tribal capacity-building efforts;
  - ▶ greater implementation of environmental programs within tribal homelands;
  - ▶ expanded education for EPA employees regarding tribal environmental issues;
  - ▶ increased technical assistance and training for tribal environmental program managers;
  - ▶ continued cross-Agency, multimedia coordination of Indian program activities by the American Indian Environmental Office; and
  - ▶ improved coordination with tribes to achieve environmental goals and priorities identified by tribal governments in the Tribal/EPA Environmental Agreements (TEAs).



---

### Components of EPA's Tribal Program

---

- A. Building tribal capacity/capability
  - B. Increasing tribal assumption of EPA programs
  - C. Direct implementation of environmental programs
  - D. Cooperative approaches to implementation
- 



#### Talking Points:

- Ask participants “Why do you think that some tribes may not have a substantive environmental program?”
- The next few slides discuss four components of the EPA tribal program in more detail. These components include:
  - ▶ building tribal capacity/capability;
  - ▶ increasing tribal assumption of EPA Programs;
  - ▶ direct implementation of environmental programs; and
  - ▶ cooperative approaches to implementation.

---

**Presentation Option:** At the beginning of the course, have participants divide into three groups. Have each group take one of the four components above and develop a presentation for the group. Participants can use all training and reference materials, as well as their own experiences, to present these concepts to the entire group. Make sure that groups cover key concepts under each component.

---

---

***For more information consult Chapter 3 page 54 of the Resource Guide.***

---



---

### Environmental Legislation

- Under a number of EPA statutes, tribes may apply for approval for environmental programs
  - Treatment of tribes varies under different statutes
- 



#### Talking Points:

- Tribal governments by virtue of their inherent sovereignty can exercise tribal authority to regulate their members and territory.
- Historically, EPA environmental statutes have provided the opportunity for states to apply for the ability to manage EPA Programs on their own. Several of these statutes were amended to recognize tribes as entities eligible to manage EPA programs on Indian lands.
- In several instances, EPA has reasoned that even though Congress has not specifically provided for tribal assumption of environmental programs in legislation, the Agency has the discretion to approve tribal programs.

---

***For more information  
consult Chapter 3 page 65  
of the Resource Guide.***

---



---

## Environmental Legislation (continued)

- Treatment of tribes as eligible to receive grants and manage programs
    - ▶ Process for tribes to assume federal environmental programs
- 



### Talking Points:

- The Clean Water, Safe Drinking Water and Clean Air Acts explicitly authorize EPA to treat Indian tribes as eligible to receive grants and to manage programs for which states may also be eligible. This process used to be called “Treatment as a State” (TAS). To be considered for eligibility the statutes require that the tribe:
  - ▶ Be federally-recognized;
  - ▶ Have a governing body carrying out substantial duties and powers;
  - ▶ Have adequate jurisdiction; and
  - ▶ Have capability to carry out the proposed activities.
- TAS SIMPLIFICATION RULE: Rules under the Clean Water and Safe Drinking Water Acts were amended to simplify EPA’s process for qualifying Indian tribes for program approval. The regulations were amended to eliminate separate steps for making eligibility determinations and program approvals. The statutory eligibility requirements are now reviewed as an integral part of processing of tribal application for program approval.

Under this rule, EPA eliminated the need to meet all four criteria each time the tribe applies for a program. In general, once a tribe has been deemed eligible for one program, it need only establish that it has jurisdiction and capability for each subsequent program. If the tribe does not have capability, it must have a plan for acquiring capability over time. This is required because each program may require different skills and activities to provide protection that meets the requirements of specific statutes and regulations.

The term TAS is somewhat misleading and may be offensive to tribes. To the extent possible, the rule amends existing regulations to discontinue use of the term “treatment-as-state.” Since this phrase is included in several statutes, its use is occasionally unavoidable.

---

**Suggestion:** For more information, refer participants to TAS Simplification memorandum of December 6, 1994 in Appendix.

---



---

### **Environmental Legislation (continued)**

---

- Treatment of tribes as eligible to receive grants and manage programs
  - Process for tribes to assume federal environmental programs
- 



#### **Talking Points:**

- National TAS Workgroup—1998
  - Established to develop comprehensive internal procedures for EPA's administrative process for reviewing tribal TAS applications.



---

## Environmental Legislation (continued)



- EPA can authorize tribal programs under Clean Water Act, Safe Drinking Water Act, Clean Air Act (including new tribal air rule)
  - TSCA
  - Tribes have a role in FIFRA and CERCLA
- 

### Talking Points (continued):

- Final Tribal Air Rule—(Issued 2/98) Regulations specifying the provisions of the Clean Air Act for which tribes may be treated in the same manner as states.
- EPA used its regulatory authority to allow for a tribal role under the following statutes that are silent as to tribes:
  - ▶ Toxic Substance Control Act (TSCA) and Emergency Planning and Community Right-to-Know Act. EPCRA allows tribes to develop a local rule for coordinating emergency response and report to the state, or report directly to EPA as states do.
- Tribes also have a role under the following statutes:
  - ▶ Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which allows for cooperative agreements with EPA for enforcement and for tribes obtain the ability to certify applicators of pesticides; and
  - ▶ Comprehensive Environmental Recovery, Compensation, and Liability Act (CERCLA), which provides that tribes may be treated substantially the same as states under several provisions.
- Unlike the SDWA, CWA, or CAA, the Resource Conservation and Recovery Act (RCRA) has not been amended to make tribes eligible to manage programs for which states are eligible and EPA may not interpret it to do so. Tribes may apply to EPA to waive certain federal requirements for reservation landfills.

---

**Suggestion:** For more information, refer participants to 1998 Tribal Air Fact Sheet in the Appendix.

---



---

### Tools for Building Tribal Capacity

---

- Financial Assistance
  - TEAs
  - Technical Assistance
  - Training
- 



#### Talking Points:

- EPA Indian Policy states that the Agency will take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibility for reservation lands. The first step is to help tribal nations build their own internal capability to manage environmental programs. This entails providing tribes with financial assistance, information, technical assistance, and infrastructure for tribal administration of environmental programs.





---

### Building Tribal Capacity through Financial Assistance

- General Assistance Program (GAP)
  - Categorical/Programmatic Grants
  - Performance Partnership Grants (PPG)
- 



#### Talking Points:

- A significant source for building tribal program capability is through the “Indian Environmental General Assistance Program Act.” GAP provides funds to federally-recognized tribal governments to build capacity to administer environmental programs and to provide technical assistance from EPA in the development of multi-media programs. GAP is the cornerstone for fostering tribal capacity since it provides tribes with an opportunity to build a core environmental program and prioritize environmental problems. Capability building activities eligible for funding under GAP include: planning, hiring staff, training, and monitoring and assessing environmental resources and pollution areas.
- A variety of grants are available to tribes under specific media statutes (e.g. Clean Water Act (106), CAA and TSCA), as well as for specific projects under other Agency programs (pollution prevention, environmental education, and environmental justice). For tribes to receive funding under certain grants, they must establish their eligibility for “treatment in the same manner as a state” under the specified statutory or regulatory criteria.

---

**Suggestion:** Trainers may want to distribute or discuss the current year’s GAP distribution totals. Refer to GAP distribution totals in the Appendix.

---

---

***For more information  
consult Chapter 3 page 62  
of the Resource Guide.***

---



---

### **Building Tribal Capacity through Financial Assistance (continued)**

- General Assistance Program (GAP)
  - Categorical/Programmatic Grants
  - Performance Partnership Grants (PPG)
- 



#### **Talking Points (continued):**

- A PPG is a multi-program grant made by EPA to a tribe, intertribal consortia or state agency from funds allocated and otherwise available for categorical grant programs. PPGs provide tribes and intertribal consortia with the option to combine funds from two or more categorical grants into one or more PPGs. The purpose of PPGs is to allow tribes the flexibility to address their highest environmental priorities across all media and establish resource allocations based on those priorities, while continuing to address core environmental program commitments. PPGs are also intended to help decrease administrative burdens and costs by reducing the number of grant applications, work plans, and reports.



---

## Building Tribal Capacity through TEAs

Tribal-EPA Environmental Agreements (TEAs) are negotiated between EPA Regions and local tribes to identify interests, priorities and commitments.

---



### Talking Points:

- The Tribal-EPA Agreement (TEA) is an environmental performance agreement that reflects tribal and federal interests, concerns, choices, and commitments for sound environmental performance by each tribal environmental office and EPA. Its focus is on identifying priorities, goals and objectives, as well as core program commitments.
- TEAs are designed to assist tribes and EPA to develop a multi-year plan identifying tribal program priorities, as well as to clarify which regulatory programs the tribes may be interested in assuming.
- The concept of TEAs was introduced in the Administrator's 1994 Tribal Operations Action Memorandum in which TEAs were described as the cornerstone on which Regions and National program managers are to build their Indian programs. In 1995, the American Indian Environmental Office issued a template providing flexible guidance on developing TEAs. More recently, the Senior Indian Managers Group identified more streamlined guidance on what a TEA should contain:
  - ▶ A baseline assessment of environmental conditions, or a plan to develop such an assessment;
  - ▶ Identification of environmental priorities by the tribal government; and
  - ▶ An agreement between the tribes and their region to work, to the extent possible, to address the tribe's priorities.

---

**Handout:** Give participants a sample TEA to review and discuss the diversity that will exist with TEAs due to the uniqueness of each tribe.

---

---

*For more information consult Chapter 3 page 64 of the Resource Guide.*

---



---

### **Building Tribal Capacity through Technical Assistance and Training**



- Native American internship program
  - Guidance and technical resources
  - Technical expertise and training
- 

#### **Talking Points:**

- EPA provides training and technical assistance to tribes and provides guidance on developing and implementing environmental programs. This assistance is accomplished in a variety of ways.
  - ▶ EPA hosts tribal interns to work at EPA to acquire an understanding of EPA programs and bring this knowledge back to Indian country.
  - ▶ EPA provides tribes with Agency guidance documents and technical resource information.
  - ▶ EPA staff goes on-site in Indian country to provide hands-on technical expertise and compliance assistance.
  - ▶ EPA hosts training programs for tribal staff on environmental statutes and programs.

---

**Suggestion:** Ask participants to think of other examples of how EPA can help build the capacity of tribal environmental programs (e.g., consistent funding source, information and data sharing, on-site hands-on field presence, bring tribes into environmental community and network, assist in building tribal legal infrastructure, dedicated EPA resources for technical assistance, etc.)

---

---

***For more information  
consult Chapter 3 page 63  
of the Resource Guide.***

---



---

### **Tribal Assumption of Federal Environmental Programs**



- EPA recognizes tribal governments as primary parties for managing programs for reservations consistent with Agency standards and regulations.
  - EPA will take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities.
  - EPA will identify and remove existing legal and procedural impediments to working effectively with tribes.
- 

#### **Talking Points:**

- A tribal government is generally the appropriate non-federal authority for setting standards and protecting the environment and public health in Indian country. When a tribe receives approval for managing environmental programs, the tribe is recognized as the principal party for performing official activities under federal environmental laws. EPA's role in this partnership is to provide technical assistance and federal funding whenever possible. (EPA must also monitor the program to ensure that it continues to meet federal standards.) (Principle #2 of 1984 Indian Policy)
- As tribes move to develop environmental protection programs within Indian country, they usually undertake three important steps: (1) establish the necessary statutory framework by passing tribal environmental codes; (2) draft the necessary regulations; and (3) establish an administrative body (if one does not already exist), which can ultimately seek tribal administrative or judicial sanctions to enforce the tribal law.
- To assume many of EPA's major grant or regulatory programs, tribes may need to go through the 'Treatment in the same manner as a state' process.

---

**Handout:** Have participants look at AIEO's matrix of program delegations to tribes.

---

---

***For more information consult Chapter 3, Section III, Subsection B of the Resource Guide.***

---



---

## **Tribal Assumption of Federal Environmental Programs (continued)**

---



### **Talking Points (continued):**

- States often challenge tribal jurisdiction to regulate activities of non-Indians on non-member owned fee lands in Indian country, particularly on reservations with large non-Indian populations. For example, Montana challenged EPA's approval of the Confederated Salish and Kootenai Tribes' application for program authorization under Section 303 of the Clean Water Act (Water Quality Standards) for all surface waters within the boundaries of the Flathead reservation. The approval was the first time that EPA recognized tribal authority for a regulatory program over non-tribal member activities on fee lands. The Ninth Circuit Court of Appeals has affirmed EPA's decision. The State is seeking review by the Supreme Court.



---

### Direct Implementation of Environmental Statutes

---



- EPA manages programs for tribes until they are willing and able to do so
  - All direct implementation work should be done with tribal consultation
  - Cooperative Approaches
- 

#### Talking Points:

- When tribes cannot, or choose not, to assume certain activities under EPA's programs, EPA engages in implementation; this is referred to as 'direct implementation.' For example, EPA would be responsible for issuing permits, providing compliance assistance and enforcement activities for the regulated community in Indian country. Direct implementation can be part of a phased approach with the tribe, along with capacity building and program delegation.
- The EPA Indian Policy clearly identifies direct implementation as a responsibility for the Agency: "Until tribal governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations, unless the State has an express grant of jurisdiction from Congress sufficient to support delegation to the State government." (Principle #3 of EPA's Indian Policy)
- It is very important that EPA's direct implementation of environmental programs in Indian country be done in accordance with the EPA Indian Policy. For example, even though EPA has primary responsibility for implementing these programs, Agency staff still have the responsibility to consult with tribal governments regarding any activities on their lands. **Therefore, all direct implementation work should be done in consultation with, and involvement from, the tribal government.** EPA also has a trust responsibility regarding the protection of tribal off-reservation rights. In addition to pollution control, through the NEPA process and other vehicles, EPA, consistent with its trust responsibility, looks out for the natural resources and sovereign rights of tribal nations.

---

*For more information  
consult Chapter 3 page  
70 of the Resource  
Guide.*

---



---

## Enforcement



- Enforcement includes all efforts to encourage compliance with environmental programs in Indian country.
  - Tribes may have their own laws or codes that are enforceable in tribal court.
  - Notification and consultation required by EPA staff pursuing enforcement activities.
- 

### Talking Points:

- Enforcement consists of all efforts to encourage compliance with environmental programs in Indian country. One of the main components of environmental programs in Indian country is the enforcement of either tribal regulations or federal environmental laws.
- To be approved under a federal environmental statute, such regulations established by the tribe must meet all national standards and regulations and may be more strict than national standards in protecting against environmental degradation. Issuing and enforcing tribal rules and permits enables tribes to maintain their own environmental standards and regulations. For those programs where tribes cannot or do not develop a tribal regulatory framework, federal environmental laws may be enforced in federal court.
- Enforcement includes activities such as inspections, permitting, compliance monitoring, and other efforts to encourage compliance with environmental standards. In some cases, a tribe may perform many activities involved in environmental programs but leave enforcement up to EPA. For example, tribes need to rely on EPA to perform criminal prosecution in cases where they lack criminal enforcement authority.
- Regional enforcement activities should be consistent with the President's directive that each federal agency consult with tribal governments, to the greatest extent practicable, prior to taking actions that affect an Indian tribe.

---

**Suggestion:** Refer participants to the “Enforcement Activities in Indian country” of the OECA Guidance in the Appendix.

---





---

### Challenges of Direct Implementation

- Inadequate identification of facilities on tribal lands
  - Allocation of EPA resources (FTE) to do the work
  - Conflicts with states over jurisdiction
- 



#### Talking Points:

- Current challenges to direct implementation of environmental programs on Indian lands, include (also continued on the next slide):
  - ▶ inadequate identification of facilities on tribal lands;
  - ▶ allocation of EPA staff resources to do the work; and
  - ▶ conflicts with states over jurisdiction.

---

**Exercise:** Before showing the “Challenges” slides have participants identify potential barriers to EPA when providing direct implementation for tribes.

---



---

### **Challenges of Direct Implementation (continued)**



- Lack of internal EPA expertise (work has been traditionally delegated to states outside of Indian country);
  - Tribal potential resistance to EPA presence on Indian lands; and
  - Complications with tribally-owned facilities
- 

#### **Talking Points (continued):**

- Current challenges in EPA providing direct implementation of environmental programs on Indian lands, include:
  - ▶ lack of internal EPA expertise (work has traditionally been delegated to states outside of Indian country);
  - ▶ tribal resistance to EPA presence on Indian lands; and
  - ▶ complications with tribally-owned facilities.



---

### Successes of Direct Implementation

- Local successes to be identified.



#### Talking Points:

- Discuss examples of successful Regional or programmatic direct implementation activities. For example, many Regions assist with the regulation of drinking water sources and of underground injection wells that can affect drinking water, surface water, and ground water sources. *Regional or programmatic examples will be identified.*

---

**Suggestion:** Trainer could ask the audience to provide examples of successful direct implementation.

---



---

## Organization of EPA's Indian Program

- American Indian Environmental Office
  - ▶ Coordinates Agency-wide tribal efforts
  - ▶ Oversees development and implementation of EPA Indian Policy



### Talking Points:

- EPA's Indian Program is implemented primarily by EPA Regions and Headquarters Program Offices.
- The **American Indian Environmental Office** (AIEO), working in conjunction with its Regional components, is responsible for coordinating the Agency-wide effort to strengthen public health and environmental protection in Indian country. AIEO oversees development and implementation of the Agency's Indian Policy and strives to ensure that all EPA Headquarters and Regional Offices implement their portions of the Agency's Indian Program in a manner consistent with EPA's trust responsibility regarding the protection of tribal health and environments.
- The AIEO, which is organizationally located in the Office of Water, has the following responsibilities:
  - ▶ Develop tools to assist tribal environmental managers in their decisions on environmental priorities;
  - ▶ Develop training curricula for EPA staff on how to work effectively with tribes; and
  - ▶ Work to improve communications between the Agency and its tribal stakeholders.

---

**Suggestion:** Refer participants to AIEO Home page information and review AIEO update in the Appendix.

---

---

***For more information consult Chapter 3 Section IV of the Resource Guide.***

---



---

### **Organization of EPA's Indian Program (continued)**

- Regional programs and operations
    - EPA Regional Offices have the primary responsibility for direct implementation on Indian lands
    - Regional Indian program coordinator or Program Office
- 



#### **Talking Points:**

- Federally-recognized tribes reside in nine of the ten EPA Regions (Region III is the exception, although there are a few state-recognized tribes). Each EPA Region has a tribal program component with an appointed Regional Indian Coordinator responsible for overseeing the implementation of the EPA Indian Policy. Some Regions have established an Indian Program Office. EPA Regional Offices have the primary responsibility for direct implementation of Federal EPA Programs on Indian lands and typically provide technical assistance and guidance to tribes as they work to build their own capacity to manage environmental programs.



---

## Organization of EPA's Indian Program (continued)



- Tribal Operations Committee (TOC)
    - ▶ Established to improve communication between EPA and tribes
    - ▶ Comprised of tribal leaders and EPA's Senior Leadership team
    - ▶ Most regions have a counterpart
- 

### Talking Points:

- The Agency established the **Tribal Operations Committee (TOC)** in February, 1994 to improve communications and build stronger partnerships with tribes. The TOC is comprised of 19 tribal leaders or their environmental program managers (the Tribal Caucus) and EPA's Senior Leadership team, including the Administrator, the Deputy Administrator, and the Assistant and Regional Administrators. The TOC meets regularly to discuss implementation of the environmental protection programs co-regulated by tribes and EPA. Although the TOC is an important and effective vehicle for enhancing communications between EPA and the tribes, it is not a substitute for Agency consultation with individual tribes in accordance with the Administration policy on working with Indian tribes on a government-to-government basis.
- Most Regional Offices have established a Regional counterpart to the Tribal Operations Committee. Some Regions have a formal Regional Tribal Operations Committee (RTOC) comprised of tribes residing within the Region, while others have instituted regular meetings between tribal leaders and the Region's senior management.

---

**Suggestion:** Provide a copy of the Tribal Operations Committee membership list and charter.

---



---

### Organization of EPA's Indian Program (continued)



- Senior Indian Program Managers Group
    - ▶ Chaired by AA for Water
    - ▶ Includes a Senior Manager from each Office/Region and the Director of AIEO
    - ▶ Discusses national issues and policy and program direction
- 

#### Talking Points:

- The Senior Indian Program Managers Group is chaired by the Assistant Administrator for Water and includes a Senior Manager (designated by each Assistant Administrator/ Regional Administrator), and the Director of AIEO. This group meets monthly via teleconference to discuss nationally significant issues and policy and program direction, and to exchange information between Headquarters and Regions. The group was established to help the Agency strengthen EPA's Indian Program.

---

**Suggestion:** Provide a membership list of Senior Indian Managers. Refer to Appendix for information.

---



---

## Organization of EPA's Indian Program (continued)

---



- National Indian Workgroup
    - Chaired by Director of AIEO
    - Includes representatives from Regional and Program Offices
    - Facilitates and coordinates EPA activities in Indian Country
- 

### Talking Points:

- The **National Indian Workgroup** (NIWG) was established in the 1984 Indian Policy Implementation Guide. The NIWG is chaired by the Director of the American Indian Environmental Office and is composed of representatives from Regional and Program Offices, usually the Indian Coordinator. The NIWG was established to facilitate and coordinate efforts to:
  - identify and resolve policy and programmatic barriers to working directly with Indian tribes;
  - implement comprehensive tribal environmental programs;
  - identify priority tribal projects; and
  - perform other services in support of the Agency managers in implementing the Indian policy.
- The NIWG holds regular bi-weekly conference calls and usually meets at least once each year.

---

**Suggestion:** Provide a copy of the NIWG membership list and contact information. Refer to Appendix for information.

---





---

### Organization of EPA's Indian Program (continued)

---



- National Indian Law Work Group
    - Addresses legal issues that arise when implementing EPA's Indian Program
    - Comprised of lawyers and policy staff from Regional Counsel, Program Offices, OGC, AIEO and DOJ
- 

#### Talking Points:

- The **National Indian Law Work Group** (NILWG), the legal counterpart to the National Indian Workgroup, addresses legal issues that arise while developing and implementing the EPA's Indian Program. The NILWG is comprised of lawyers and policy staff from EPA's Regional Counsel and Program Offices, the Office of General Counsel, the American Indian Environmental Office and the Department of Justice. The NILWG meets once a month via teleconference to discuss nationally significant Indian law issues related to environmental protection and to exchange information on common issues and problems.



---

### Organization of EPA's Indian Program (continued)



- American Indian Advisory Council
    - Advises the EPA Administrator
    - Recommends actions to address concerns of EPA's Indian employees and tribal partners
- 

#### Talking Points:

- The **American Indian Advisory Council** (AIAC) is a Special Emphasis Program Council organized under the Office of Civil Rights. The AIAC serves as an advisory group to the Administrator of EPA by recommending actions to address concerns of Indians in the EPA workforce and of Indian tribes for which EPA acts as trustee. Membership is open to all employees of EPA.

---

***For more information  
consult Chapter 3  
Section IV of the  
Resource Guide.***

---



---

### Organization of EPA's Indian Program (continued)



- National Environmental Justice Advisory Council - Indigenous Peoples Subcommittee
    - ▶ Eight members from tribal governments, environmental organizations, and others
    - ▶ Reviews EPA actions for environmental justice
    - ▶ Develops recommendations for bringing about environmental justice in Indian Country
- 

#### Talking Points:

- The **National Environmental Justice Advisory Council (NEJAC)** chartered as a Federal Advisory Committee in 1993. The Indigenous Peoples Subcommittee has eight members representing tribal government, indigenous grassroots groups and environmental organizations, tribal business and industry, academia, and state government. The primary focus of the Subcommittee is to review EPA actions for environmental justice and to develop recommendations for bringing about environmental justice in Indian country.

---

*For more information  
consult Chapter  
3—Section IV of the  
Resource Guide*

---



---

### Organization of EPA's Indian Program (continued)

- EPA Advisory Councils with tribal representation



---

#### Talking Points:

- EPA has numerous Federal Advisory Councils that are chartered to address various environmental issues, from the Grand Canyon Visibility Transport Commission to the Common Sense Initiative. Many of these advisory councils have appointed at least one tribal representative, but some groups still lack tribal representation. These stakeholder forums offer an additional mechanism for obtaining tribal input on a variety of EPA issues.

---

*For more information  
consult Chapter  
3—Section IV of the  
Resource Guide*

---



---

### **Tribal Operations in Other Selected Federal Departments/Agencies**

---

- White House Domestic Policy Council
  - White House Council on  
Environmental Quality
- 



#### **Talking Points:**

- The **Domestic Policy Council** has established a workgroup to coordinate the federal executive branch's efforts to address key issues affecting American Indians and Alaska Natives. This group is chaired by the Secretary of Interior and is composed of Secretary and Assistant Secretary representatives from each of the Federal departments/agencies with responsibility for American Indian and Alaska Native issues. The workgroup has five subgroups, including one on the Environment and Natural Resources which is co-chaired by the Director of the EPA American Indian Environmental Office and the Assistant Secretary for the Bureau of Indian Affairs.
- The **Council on Environmental Quality** (CEQ) is primarily responsible for overseeing the implementation of the National Environmental Policy Act (NEPA) and coordinating environmental issues across the federal executive branch. Because the responsibility of tribal environmental protection is shared by many federal departments and agencies, CEQ plays an important role in the success of these efforts. In recent years, CEQ worked with EPA to strengthen the tribal role under NEPA and to ensure tribal consultation when a federal department or agency is developing NEPA documents.

---

***For more information  
consult Chapter 3  
Section V of the  
Resource Guide.***

---



---

### Other Federal Agencies (continued)

- Department of Interior
  - Department of Justice
- 



#### Talking Points (continued):

- The **Department of the Interior** (DOI) has multiple Offices and Bureaus with significant responsibilities to Indian tribes. The Bureau of Indian Affairs leads the federal executive branch on addressing Indian issues. The Office of American Indian Trust has the primary responsibility for overseeing the Federal Government's trust obligations. The Assistant Solicitor for Indian Affairs has the primary role of furthering Indian legal issues and protecting Indian rights. Other DOI Offices and Bureaus that have responsibilities for issues that affect tribal environments include: the Bureau of Land Management, the Office of Surface Mining, the Fish and Wildlife Service and the National Park Service.
- The **Department of Justice** (DOJ) plays a unique role in the protection of tribal environments and natural resources. EPA and DOI can request that DOJ take enforcement action, when such an action is warranted by law, against the responsible party for pollution causing environmental harm to tribal resources. Because most tribal environmental programs are in the early stages of development, DOJ enforcement offers a potentially powerful tool for ensuring the protection of tribal environments.
- In June 1995, the Attorney General issued the DOJ Policy on Indian Sovereignty and government-to-government relations with Indian tribes. DOJ has also developed an organizational structure to address Indian law. In order to handle litigation requests related to Indian tribes, DOJ established an Indian Resources Section within the Environment and Natural Resources Division. DOJ also established the Office of Tribal Justice to coordinate litigation strategies relating to tribes and to resolve issues of Federal Indian law.



---

### Other Federal Agencies (continued)

- Department of Health and Human Services
    - Indian Health Service
    - Administration for Native Americans
  - Department of Defense
- 



#### Talking Points (continued):

- The **Department of Health and Human Services (HHS)** has two offices which specifically handle Indian issues.
  - The **Indian Health Service (IHS)** exclusively addresses Indian health concerns. As part of many Indian treaties, the Federal Government guaranteed health care to Indian people in exchange for peace, friendship, and land. IHS has the primary responsibility for carrying-out these treaty and trust obligations.
  - The **Administration for Native Americans (ANA)** is a general Indian service organization that manages various tribal grant programs. Most important to EPA is the ANA grant program for improving the capability of tribal governments to regulate environmental quality. Similar to GAP, ANA assists tribes in developing their overall capacity to implement environmental programs.
- The **Department of Defense (DOD)**, like DOI, conducts many activities that affect Indian lands. Many DOD facilities, such as military bases, bombing ranges, overflight areas, and laboratories are located on or adjacent to Indian lands. To begin addressing the environmental harms that have resulted from these facilities, DOD manages a tribal grant program to mitigate environmental impacts to Indian lands due to DOD activities. In addition to actual facilities, tribes are impacted by actions taken by the Army Corp of Engineers. Many tribes have been impacted by Corp projects such as the construction of dams that result in the flooding of reservations and ceded territory and the issuance of dredge and fill permits for wetlands within the tribes watershed.



---

### Other Federal Agencies (continued)

- Department of Agriculture
- 



#### Talking Points (continued):

- The **U.S. Department of Agriculture** (USDA) has taken some important strides to fulfill its federal trust responsibilities to Indian Nations. In recent years, the USDA has dramatically increased outreach and program delivery to reservation residents. USDA has emphasized loan assistance and leveraging funds; tribal government consultation regarding housing development issues; and the introduction of culturally-correct housing design. The USDA continues to work with other federal departments in cooperative efforts designed to meet the needs of tribal governments. Examples of this coordination can be seen in inter-agency agreements.





---

### Current EPA Initiatives

- EPA is proactively increasing their efforts to respond to tribes in many areas. Examples include:
  - ▶ Baseline Assessment Project
  - ▶ PPG Rule for tribes
  - ▶ TAS—Recommendations for EPA Administrative Review Process
  - ▶ Tribal Air Rule



---

#### Talking Points:

- Many Offices within EPA have initiated efforts to respond specifically to tribal issues and concerns. Four recent examples are:
  - ▶ Baseline Assessment Project;
  - ▶ PPG Rule for tribes;
  - ▶ Treatment in Same Manner as a State (TAS) -- Recommendations for EPA Administrative Review Process; and
  - ▶ Tribal Air Rule.

---

**Suggestion:** Refer participants to fact sheets for the initiatives in the Appendix, for more information.

---



---

### Current EPA Initiatives (continued)

---

- EPA is proactively increasing their efforts to respond to tribes in many areas. Examples include:
    - ▶ Brownfields tribal pilots;
    - ▶ OSWER Integrated Grant; and
    - ▶ Enhanced tribal role in Superfund.
- 



### Talking Points (continued):

- Many Offices within EPA have initiated efforts to respond specifically to tribal issues and concerns. Three examples are:
  - ▶ In the next round of Brownfields pilots, OSPS has set-aside two pilots specifically for tribes.
  - ▶ OSWER has initiated an integrated grant for tribes that awards \$500,000 that can be applied to capacity building and program development in a variety of areas. In 1997, four of these grants were awarded.
  - ▶ As part of the Enhanced State and Tribal Role in Superfund Initiative, a workgroup consisting of EPA Headquarters and Regional staff and tribal representatives developed recommendations for increasing the tribal role in Superfund. Their recommendations to EPA focused on building tribal capacity, incorporating cultural values into the Superfund process, allocating funding for tribes separate from states, and fostering inter-agency coordination. In 1998, these recommendations will be piloted in each Region with tribes.



---

### Local Indian Policies or Initiatives

*To be determined by Regional or Program specific policies relevant to the trainees.*

---



#### **Talking Points:**

This space is reserved for discussing Indian policies that are relevant to specific Regions or Programs represented by the participants. For example, in March of 1996, Region 8 expanded on the national EPA Indian Policy and developed a “EPA Region 8 Policy for Environmental Protection in Indian country.” Other regions are also working on regional policy development. EPA Headquarters Offices have also developed program specific Indian Policies (e.g., the Office of Water, OSWER and OPPTS Indian Strategies).

### Module 3 Appendix Contents

- President Clinton’s Memorandum—“Government-to-Government Relations with Native American Tribal Governments” (April 29, 1994)  
<http://www.epa.gov/indian/clinton.htm>
- Executive Order 12898—“Federal Action to Address Environmental Justice in Minority Populations and EPA Policy for the Administration of Environmental Program on Indian Reservations” (February 11, 1994)  
<http://www.epa.gov/docs/oeipubs/execordr.txt.html>
- Executive Order 13007—“Indian Sacred Sites” (May 24, 1996)  
<http://www.pub.whitehouse.gov/uri-res/12R?urn:pdi://oma.eop.gov.us/1996/5/24/6.text.1>
- “EPA Policy for the Administration of Environmental Programs on Indian Reservations” (1984)  
<http://www.epa.gov/indian/1984.htm>
- Administrator Browner’s Memorandum—“EPA Indian Policy” (1994) (Contact AIEO for copy)
- Administrator Browner’s Tribal Action Memorandum— “Announcement of Actions for Strengthening EPA’s Tribal Operations” (July 12, 1994)  
<http://www.epa.gov/indian/tribe.htm>
- EPA Strategic Plan pages 85 and 86 (1997)  
<http://www.epa.gov/ocfopage/plantoc.htm>
- GAP distributions (March 4, 1998) (Contact AIEO for copy)
- Template for environmental agreements (TEA) (March 1995)  
<http://www.epa.gov/indian/agree.htm>
- Performance Partnership Grants program description  
<http://www.epa.gov/indian/ppg.htm>
- AIEO matrix of program delegations to Tribes  
<http://www.epa.gov/indian/matrix.htm>
- OECA Guidance “Enforcement Activities in Indian Country” (Contact AIEO for copy)

- AIEO update (April 1998)  
<http://www.epa.gov/indian/lup.htm>
- Tribal Operations Committee charter (contact AIEO for copy) and membership list  
<http://www.epa.gov/indian/overtoc.htm>
- Senior Indian Manager's Group membership list (Contact AIEO for copy)
- National Indian Workgroup membership list (Contact AIEO for copy)
- Memorandum of Understanding Among BIA, EPA, and IHS (Contact AIEO for copy)